

Message Text

CONFIDENTIAL

PAGE 01 NEW DE 07376 041441Z

51

ACTION NEA-10

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R 041330Z JUN 75

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 9039

INFO AMEMBASSY COLOMBO

AMEMBASSY DACCA

AMEMBASSY ISLAMABAD

AMEMBASSY KATHMANDU

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

C O N F I D E N T I A L NEW DELHI 7376

E.O. 11652: GDS

TAGS: PINT, PFOR, IN

SUBJ: A DECISION APPROACHES ON MRS. GANDHI'S ALLAHABAD

REF: (A) NEW DELHI 3683; (B) NEW DELHI 3868; (C) CHANDRA-
TOMSEN MEMCON, MAY 7, 1975

SUMMARY: THE ALLAHABAD HIGH COURT JUDGE HEARING MRS. GANDHI'S
ELECTION PETITION CASE WILL PROBABLY ISSUE HIS DECISION THIS
MONTH. THE DECISION WILL PROBABLY FALL INTO ONE OF THREE
CATEGORIES (A) DISMISS THE PETITION AGAINST MRS. GANDHI,
POSSIBLY WITH SOME CRITICISM OF THE CONDUCT OF THE
CAMPAIGN, (B) VOID THE ELECTION ON THE BASIS OF MALPRACTICES
BUT NOT FIND MRS. GANDHI CULPABLE; AND (C) VOID THE ELECTION ON
THE BASIS OF HER VIOLATION OF THE CORRUPT PRACTICES PROVISIONS
OF THE 1951 REPRESENTATION OF THE PEOPLE'S ACT. ALTERNATIVE (C)
WOULD AUTOMATICALLY DISQUALIFY MRS. GANDHI FROM HOLDING OR CON-
TESTING A PARLIAMENTARY SEAT AND WOULD PLACE HEAVY POLITICAL
PRESSURE ON HER TO RESIGN. NEVERHELESS, THERE ARE A NUMBER OF
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 NEW DE 07376 041441Z

STEPS SHE COULD TAKE TO RETAIN THE PRIME MINISTERSHIP, PENDING

AN APPEAL TO THE SUPREME COURT, WHICH MOST OBSERVERS AGREE WILL GIVE HER A MORE SYMPATHETIC HEARING. ALL, THOUGH LEGAL, WOULD BE POLITICALLY DAMAGING. SOME OF OUR CONGRESS PARTY CONTACTS TELL US THAT CONTINGENCY PLANS FOR MRS. GANDHI TO STEP DOWN TEMPORARILY IN FAVOR OF AN INTERIM PRIME MINISTER CHOSEN BY HER ARE ALREADY PREPARED. END SUMMARY.

1. BARRING UNFORESEEN DEVELOPMENTS, JUDGE SINHA OF THE ALLAHABAD HIGH COURT WILL PROBABLY HAND DOWN HIS DECISION ON THE VALIDITY OF MRS. GANDHI'S 1971 ELECTION THIS MONTH, PROBABLY SOMETIME BETWEEN JUNE 15 AND JUNE 30. OUR ASSESSMENT IS THAT HIS DECISION WILL FALL INTO ONE OF THREE CATEGORIES.

(A) DISMISS THE PETITION AGAINST MRS. GANDHI AND UPHOLD HER ELECTION. WHILE FINDING MRS. GANDHI NOT GUILTY, JUDGE SINHA MAY NEVERTHELESS CHOOSE TO SCOLD HER AND/OR HER CAMPAIGN MANAGERS PUBLICLY FOR SHADY CAMPAIGN PRACTICES OR CARELESSNESS.

(B) VOID MRS. GANDHI'S 1971 ELECTION ON THE BASIS OF MAL-PRACTICES, BUT NOT FIND MRS. GANDHI PERSONALLY CULPABLE. IN THIS EVENT, MRS. GANDHI COULD, IF SHE CHOOSES TO, CONTINUE AS PRIME MINISTER AND SEEK RE-ELECTION TO THE LOK SABHA WITHIN THE SIX MONTH PERIOD LAID DOWN IN THE CONSITUTION.

(C) VOID MRS. GANDHI'S 1971 ELECTION ON THE BASIS OF HER VIOLATION OF THE CORRUPT PRACTICES PROVISIONS OF THE 1951 REPRESENTATION OF THE PEOPLE'S ACT. IN THIS EVENT, MRS. GANDHI WILL AUTOMATICALLY BE DISQUALIFIED UNDER THE ELECTION LAW FROM "BEING CHOSEN AS, AND FOR BEING, A MEMBER OF EITHER HOUSE OF PARLIAMENT..." (NOTE: 1968, THE ANDHRA HIGH COURT FOUND UNION MINISTER OF STEEL AND MINES CHENNA REDDY GUILTY OF CORRUPT ELECTION PRACTICES AND VOIDED HIS ELECTION TO PARLIAMENT. HE SUBSEQUENTLY RESIGNED FROM THE CABINET, REPORTEDLY AFTER A LETTER FROM MRS. GANDHI TO THE PRESIDENT ADVISING THAT A RESIGNATION WOULD BE IN THE BEST INTERESTS OF DEMOCRACY. END NOTE.)

2. IF SINHA'S DECISION FOLLOWS OPTION 1(C), MRS. GANDHI WILL COME UNDER HEAVY POLITICAL PRESSURE TO RESIGN. NEVERTHELESS, SHE MAY NOT BE LEGALLY REQUIRED TO DO SO. THE INDIAN CONSITUTION AND STATUTE LAW PROVIDE A NUMBER OF WAYS BY WHICH SHE COULD RETAIN THE PRIME MINISTERSHIP:

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 NEW DE 07376 041441Z

(A) IMMEDIATELY AFTER THE ALLAHBAD COURT DECISION, HER LAWYERS COULD REQUEST JUDGE SINHA TO ISSUE A "STAY" ORDER--WHICH HE COULD IMMEDIATELY GRANT--PENDING AN APPEAL OF HIS DECISION TO THE SUPREME COURT. ALL OBSERVERS AGREE THE SUPREME COURT IS LIKELY TO GIVE MORE SYMPATHETIC HEARING MRS. GANDHI'S CASE (SEE REFERENCE POUCHED SECSTATE BUT NOTAL)

(B) SINHA, HOWEVER, CAN REFUSE TO GRANT A STAY ORDER. OR, FOLLOWING PREVIOUS PRECEDENTS, HE COULD QUALIFY A STAY ORDER, LIMITING MRS. GANDHI'S CONNECTION WITH PARLIAMENT TO MERE ATTENDANCE, NOT ACTIVE PARTICIPATION OR VOTING. SUCH A REFUSAL OR LIMITATION MIGHT FORCE MRS. GANDHI TO STEP DOWN IN FAVOR OF AN INTERIM PRIME MINISTER, PENDING SUPREME COURT STAY ORDER OR DECISION.

(C) THE ELECTION COMMISSIONER COULD WAIVE THE DISQUALIFICATION PENALTY, AS HE IS EMPOWERED TO DO UNDER THE CONSTITUTION (SEE REF (C)). MRS. GANDHI COULD THEN SEEK A NEW PARLIAMENTARY SEAT. SHE WOULD, WE THINK, ALSO CONTINUE TO SEEK VINDICATION THROUGH AN APPEAL TO THE SUPREME COURT. SUCH INTERVENTION BY THE ELECTION COMMISSIONER, AN APPOINTEE OF MRS. GANDHI'S, WOULD PROBABLY BE STRONGLY CRITICIZED FROM MANY SIDES AND WOULD BE POLITICALLY DAMAGING.

(D) MRS. GANDHI COULD DISSOLVE THE LOK SABHA IF THE CONGRESS DOES WELL IN GUJARAT, AND SCHEDULE NEW ELECTIONS. THE CONSTITUTIONAL LIMIT FOR HOLDING NEW ELECTIONS IS SIX MONTHS AND MRS. GANDHI COULD EXPECT ANY SUPREME COURT APPEAL TO BE CONCLUDED BY THEN.

3. MIDDLE LEVEL CONGRESS POLITICIANS AND SOME CORRESPONDENTS BELIEVE THAT THERE IS AT LEAST AN EVEN CHANCE FOR A NEGATIVE DECISION AND CONTINGENCY PLANS ARE ALREADY LAID OUT IN THE EVENT MRS. GANDHI RESIGNS PENDING A SUPREME COURT DECISION. THE PLANS ALLEGEDLY CALL FOR MRS. GANDHI TO ASSUME THE CONGRESS PRESIDENCY WHERE SHE CAN CONTINUE TO INFLUENCE THE INDIAN POLITICAL SCHEME. THE CONGRESS PARLIAMENTARY PARTY WILL FORMALLY ELECT AN INTERIM PRIME MINISTER CHOSEN BY HER.

CONFIDENTIAL

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PAGE 04 NEW DE 07376 041441Z

4. THE FOREIGN MINISTRY'S SPOKESMAN INFORMED A NUMBER OF REPORTERS JUNE 3 "ON BACKGROUND" THAT THE PRIME MINISTER'S SCHEDULED JUNE 17-24 MEXICAN-CUBAN TRIP IS STILL "NOT FINALIZED." AN OFFICIAL OF THE P.M.'S SECRETARIAT TOLD AN EMBASSY THE SAME DAY THAT THE ALLAHABAD COURT CASE WAS ONE REASON FOR THIS. WXNJYND#OURSELVES LOOKING AT THE LIMITED POSSIBILITY OF THE INDIAN POLITICAL/JUDICIAL SYSTEM JETISONING ITS PRIME MINISTER. RECENT HISTORY INCLINES US NOT TO MAKE TOO CONFIDENT AN ASSESSMENT OF THE LIKELIHOOD OF THIS HAPPENING HERE. WE WILL REPORT PROMPTLY ON JUDGE SINHA'S DECISION.
SCHNEIDER

NOTE BY OC/T: #PARA. 4. AS RECEIVED.

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